

TTAB

***Cary Brett Berman
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United States Department of Commerce
Patent and Trademark Office
Trademark Trial and Appeal Board
Attn: TTAB
PO Box 1451
Arlington, Va. 22313-1451

July 10, 2007

In re Application Serial No. : 78/320850
Mark : ENYCE
International Class : 12
Applicant : Cary Berman
Filed : October 30, 2003
Published : August 24, 2004

Dear Sir/Madam:

Enclosed for filing in the above captioned matter are the original and one copy of the following:

1. Applicant's Trial Brief

Respectfully submitted,


Cary Berman

CC: Kieran Doyle
Cowan, Liebowitz & Latman, P.C.



07-12-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cary Brett Berman
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L. C. Licensing, Inc.

Opposer,

v.

CARY B. BERMAN

Applicant

Opposition No. 91162330
Serial No. 78320850

Applicants Trial Brief

In re Application Serial No.	: 78/320850
Mark	: ENYCE
International Class	: 12
Applicant	: Cary Berman
Filed	: October 30, 2003
Published	: August 24, 2004

Applicant, representing himself pro se submits this Trial Brief on July 10, 2007.

The Applicant is Cary Berman. Cary Berman is a law abiding U.S. citizen living at 1917 Lafayette Rd., Gladwyne, Pa. 19035. Applicant is not represented by council and represents himself pro se.

Applicant believes that it should receive registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004.

Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything. Applicant will testify at trial that applicant independently thought of the group of letters ENYCE to be used on automotive products. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry.

Applicant is not an attorney and does not have the expertise to perform the task of preparing a formal trial brief with cited cases. Therefore applicant will rely on common sense as applicant's position is very simple.

Applicant respectfully requests that the individual or individuals that will rule on this case perform a simple exercise. Please write the letters ENYCE on a piece of paper and show it to your family and friends to see if any of them have seen this mark or if any knows how to pronounce the mark. Applicant is certain that said findings will show that Opposer's mark is not as well known as the picture that Opposer wants to paint.

Opposer wants to compare it's mark to famous well known marks in such a way as a B-movie extra would compare himself to Clint Eastwood. Opposer did not think enough of it's own mark to spend the money necessary to file said mark on other product categories such as the one in question here. Applicant would think that if Opposer felt so strongly about the connection between clothing and automotive products that the three hundred dollars or so application fee would have been a good investment.

While not an Attorney it would seem that the US Patent And Trademark Office should not want to offer trademark protection to unknown trademarks in categories that they have not spent the time or money to file in. Does this unknown group of letters really deserve protection because they are owned by a giant company and are represented by a big law firm?

Opposer does not have "clean hands". Opposer has withheld evidence during the discover period. The actual "inventor" of Opposer's mark was not produced during discovery because Opposer contended that said individual was not an employee of Opposer. This individual is clearly an employee according to the Internal Revenue Service's definition of an employee. The information that proves that said individual is an employee is contained in the depositions of the two other individuals that were produced.

Applicant will use it's Mark within six months of receipt of final approval to do so from the US Patent And Trademark Office. Applicant will testify to this fact at trial. Applicant does not understand how it could be denied the use of it's Mark because it has yet to use it's Mark. Wouldn't the current legal issues (differences) between the parties be considerably more significant if Applicant had used it's Mark prior to final approval?

Opposer does not have a famous mark. Opposer does not deserve protection for it's Mark for International Class 12 as it did not file it's Mark in International Class 12. Confusion will not exist between the Marks because consumers are not as yet aware of either Mark and the product categories are not alike in any way.

Applicant therefore respectfully asks that the Board grant registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE to Applicant.

SUBMITTED this 10th day of July, 2007.

CARY BRETT BERMAN

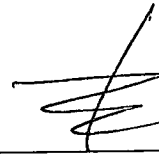


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CERTIFICATE OF SERVICE

I, Cary Berman, hereby certify that true and correct copies of the foregoing **APPLICANT'S TRIAL BRIEF** were served on Opposer by priority mailing same (with delivery conformation) to Kieran Doyle Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY. 10036-6799 this 11th day of July, 2007.



Cary Berman